

## TRANSPORTATION DEPARTMENT[761]

### Notice of Intended Action

#### **Proposing rule making related to the RISE program and providing an opportunity for public comment**

The Transportation Department hereby proposes to amend Chapter 163, “RISE Program,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 315.10.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 315.

#### *Purpose and Summary*

This proposed rule making adds a definition for “traffic impact analysis,” which is often a necessary part of a project transportation justification required at the time of application, and clarifies the Department’s annual reporting requirements to state that the report will indicate the amount and percentage of funds committed during the previous year, which is consistent with current accounting practice. The proposed rule making explains that only the city portion of uncommitted Revitalize Iowa’s Sound Economy (RISE) funds is carried over from year to year, whereas uncommitted county RISE funds are credited to the Secondary Road Fund annually.

The proposed amendments make modifications to the eligible costs associated with principal and interest payments to explicitly exclude any administrative or legal expenses and to clarify that the term of a bond associated with a RISE project may not exceed the useful life of the roadway consistent with Iowa Code section 315.4A. New eligible costs are proposed to be added to include certain modifications to railroad facility adjustments required by construction of a RISE roadway, which require an executed agreement between the railroad and the roadway jurisdiction.

Application requirements are proposed to be added consistent with current practice to require that economic development efforts, zoning, platting, subdivision boundaries, corporate limits, and future development plans be identified in narratives or through the submittal of maps. A detailed description of what is required for a transportation justification is also proposed to be added, noting that a traffic impact analysis may be required by the Department.

The proposed amendments also add a requirement in subrule 163.11(2) for applications to summarize nonroadway factors, such as utility provision, fire protection or permits, for consistency with subrule 163.10(6); move to subrules 163.10(2) and 163.11(2) the requirement that any business that is assisted by the project and acquires or merges with an Iowa corporation within three years of the RISE application make a good-faith effort to hire existing workers of the merged or acquired corporation; and add that a formal resolution is required to state that land provided access by the improvement will be developed consistent with the purpose of the RISE program.

Finally, the application format is proposed to be changed for consistency with current Department practice in order to allow more flexibility rather than require hard-copy submission of the application and the identification of job creation or other development contingencies and procedures for compliance in the project agreement.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 3, 2023. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Government and Community Relations  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

### *Public Hearing*

If requested, a public hearing to hear oral presentations will be held on January 5, 2023, via conference call at 10:00 a.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on January 3, 2023, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following new definition of “Traffic impact analysis” in rule **761—163.1(315)**:  
“*Traffic impact analysis*” means an analysis identifying system and immediate impacts associated with a proposed development to allow an assessment of the existing and future highway system’s safety, performance, maintenance, and capacity needs and includes all necessary information as required by the department.

ITEM 2. Amend rule 761—163.2(315) as follows:

**761—163.2(315) Information and forms.** Information, instructions and application forms may be obtained from the ~~Office of Systems Planning~~ Bureau, Iowa Department of Transportation, 800 Lincoln

Way, Ames, Iowa 50010; by telephone at (515)239-1664; or through the department's website at [www.iowadot.gov](http://www.iowadot.gov).

ITEM 3. Amend subrule 163.4(3) as follows:

**163.4(3)** The department shall annually prepare a written report indicating the amount and percentage of funds ~~expended~~ committed during the previous year on primary roads, secondary roads, city streets, state park roads and county conservation parkways.

ITEM 4. Amend paragraph **163.5(2)“g”** as follows:

*g. Carryover of funds.* The commission need not commit the spending of all RISE funds available during a programming cycle. Uncommitted city funds may be carried over to the next programming cycle or used for immediate opportunity projects. On June 30 of each year, all uncommitted county funds shall be credited to the secondary road fund.

ITEM 5. Amend subrule 163.8(1) as follows:

**163.8(1) Eligible activities.** Project activities or costs eligible for RISE funding, and which may be counted as part of the non-RISE participation in immediate opportunity and local development roadway projects, include only the following:

*a. to h.* No change.

*i.* County and city bond principal and interest payments associated only with RISE projects. No financing expenses incurred prior to funding commitment shall be eligible, and no administrative or legal expenses may be reimbursed. The bond term may not exceed the expected useful life of the roadway.

*j. to l.* No change.

*m.* Costs of modifications to railroad facilities required to construct the RISE roadway, including but not limited to construction, hiring flaggers, and engineering performed by the railroad or the railroad's contractor, that are consistent with an executed agreement between the railroad and the roadway jurisdiction.

ITEM 6. Amend subrule 163.10(2) as follows:

**163.10(2) Contents of applications.** Each application for an immediate opportunity project must contain the following:

*a.* General information, including ~~applicant~~ the applicant's name, contact person, mailing address, telephone number, local economic development area and history of efforts in the area, and other information of a general nature about the project proposal and the associated economic development activity.

*b. and c.* No change.

*d.* A preliminary project concept statement for the roadway project, including ~~a location map,~~ maps showing site characteristics, such as zoning, platting, subdivision boundaries, and corporate limits; a sketch plan; and a justification for the transportation improvement. In most cases, a sketch plan should include a simple plan and profile defining the horizontal and vertical geometrics and a typical roadway cross section defining pavement, shoulders, foreslope, and backslope or border treatment. The transportation justification should address topics such as the current condition of existing roadways or bridges, the relationship of the project to connecting roads, and ingress to and egress from the site, as well as the current flow of traffic on the development site, anticipated total traffic and large truck traffic, proposed major design features of the proposed improvement, the intended roadway function, how the proposed improvement is consistent with other local plans, and the reason the proposed alternative was selected over other alternatives. In consultation with the department, a traffic impact analysis may be required to supplement the transportation justification.

*e.* No change.

*f.* A formal resolution passed by the governing body of the jurisdiction responsible or to be responsible for the road or street to be constructed or improved. The resolution shall state that the project will be adequately maintained and dedicated to public use for a minimum of 20 years after completion of the project and that land provided access by the proposed improvement will be developed according to rule 761—163.3(315). The resolution must also certify that the project meets the threshold

criteria cited in paragraph ~~163.10(6) “a.”~~ 163.10(6) “a” and that any business assisted by the project which acquires or merges with an Iowa corporation within three years following the RISE application shall make a good-faith effort to hire the workers of the merged or acquired company.

g. No change.

ITEM 7. Amend subrule 163.10(3) as follows:

**163.10(3) *Submission of applications.*** ~~An original and one copy of each completed application~~ Applications shall be submitted ~~to~~ on a form provided by the department. Applications may be submitted at any time.

Once an application has been submitted, no further information concerning that application shall be accepted by the department from the applicant unless specifically requested by the department. Applications may be withdrawn by the applicant and resubmitted at any time. Resubmitted applications shall be dated accordingly.

ITEM 8. Amend subrule 163.11(2) as follows:

**163.11(2) *Contents of applications.*** Each application for a local development project must contain the following:

a. General information, including ~~applicant~~ the applicant’s name, contact person, mailing address, telephone number, local economic development program and history of efforts in the area, and other information of a general nature about the project proposal and the associated economic development activity.

b. and c. No change.

d. A preliminary project concept statement for the roadway project, including ~~a location map,~~ maps showing site characteristics such as zoning, platting, subdivision boundaries, and corporate limits; a sketch plan; and a justification for the transportation improvement. In most cases, a sketch plan should include a simple plan and profile defining the horizontal and vertical geometrics and a typical roadway cross section defining pavement, shoulders, foreslope, and backslope or border treatment. The transportation justification should address topics such as the current condition of existing roadways or bridges, the relationship of the project to connecting roads, and ingress to and egress from the site, as well as the current flow of traffic on the development site, anticipated total traffic and large truck traffic, proposed major design features of the proposed improvement, the intended roadway function, how the proposed improvement is consistent with other local plans, and the reason the proposed alternative was selected over other alternatives. In consultation with the department, a traffic impact analysis may be required to supplement the transportation justification.

e. No change.

f. A formal resolution passed by the governing body of the jurisdiction responsible or to be responsible for the road or street to be constructed or improved. The resolution shall state that the project will be adequately maintained and dedicated to public use for a minimum of 20 years after completion of the project and that land provided access by the proposed improvement will be developed according to rule 761—163.3(315). The resolution must also certify that any business assisted by the project which acquires or merges with an Iowa corporation within three years following the RISE application shall make a good-faith effort to hire the workers of the merged or acquired company.

g. A summary showing that necessary arrangements have been made for nonroadway factors (e.g., zoning, sewer, water, police and fire protection, financing, and permits) essential for the proposed economic development activity.

ITEM 9. Amend subrule 163.11(3), introductory paragraph, as follows:

**163.11(3) *Submission of applications.*** ~~An original and one copy of each completed application~~ Applications shall be submitted ~~to~~ on a form provided by the department.

ITEM 10. Amend subrule 163.12(1) as follows:

**163.12(1) *Agreement.*** After a funding commitment has been made for a project, the department shall enter into a project agreement with the applicant. The agreement shall delineate responsibilities for project planning, design, right-of-way, contracting, construction and materials inspection, and

documentation. The agreement shall ~~require that a business assisted by the project which acquires or merges with an Iowa corporation within three years following the RISE application shall make a good faith effort to hire the workers of the merged or acquired company~~ identify any additional requirements for the project relating to specific jobs to be created or retained and land identified as being required to be developed consistent with rule 761—163.3(315). Procedures for documenting compliance with these requirements will also be identified in the agreement. The agreement shall require the applicant to comply with all local, state, and federal laws, and rules and regulations that may apply to the project.